In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.4048 of 2006.

Date of decision:1.12.2006.

M/s Phool Chand Rattan Lal Madhogadhia.

...Appellant.

Versus

Mahabir Prasad and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Jaivir Yadav Advocate for the appellant.

...

Judgment.

S. N. Aggarwal, J.

Chandgi Ram (now deceased) was the owner of the shop in dispute. It was rented out to the appellants on the monthly rent of Rs.1,550/-. Said Chandgi Ram filed a suit for possession of the said shop in 1997 pleading that the said shop was constructed in the year 1990 and,therefore, the provisions of Haryana Urban (Control of Rent and Eviction) Act (in short the Act) do not apply to the demised premises for a period of 10 years. Accordingly,notice dated 1.7.1997 was served on the appellants requiring them to vacate the demised

premises which was received by them on 25.7.1997. The appellants refused to vacate the premises. Hence, the suit for possession.

The appellants admitted that they were the tenants in the shop in dispute under the respondents. However, it was denied if the shop in dispute was constructed in the year 1990 or if the provisions of the Act are not applicable to the shop in dispute. The legality and validity of the notice was also denied and the appellants claimed to be contractual tenants in the demised premises. Preliminary objections were also raised.

Issues were framed.

The respondents examined Dalip Kumar Clerk, Municipal, Committee, Mahendergarh as PW-1, Jagram as PW-2, Dalip Singh, Clerk Municipal Committee as PW-3, P.R.Gupta,Draftsman as PW-4. Brash Bhan (one of the plaintiff) was examined as PW-5, Basti Ram, Junior Engineer, Municipal Committee Narnaul as PW-6, Hari Ram Gupta, Clerk of Shri S.Joshi Advocate as PW-7 and Dharam Pal, Clerk of Municipal Committee as PW-8. Site plans,Exhibits P-1 and P-2, report Exhibit PW6/A, notices Exhibits A and B and receipts Exhibits PW7/C and PW7/D were also proved.

On the other hand, the appellants examined Bharat Singh as DW-1, Shiv Kumar Sultan as DW-2, Sant Lal as DW-4 while Rattan Lal defendant appeared as DW-4.

After assessing the evidence, the learned trial Court held

that the shop in dispute was constructed in the year 1990. Therefore, the provisions of the Act were not applicable and the suit for possession was maintainable. Accordingly, the suit was decreed by the learned trial Court vide judgment and decree dated 11.12.2001 and the appellants were directed to hand over vacant possession of the shop in dispute within a period of one month.

The appellants filed an appeal. The learned Lower Appellate Court up-held the finding of fact recorded by the learned Rent Controller and dismissed the appeal vide judgment and decree dated 9.9.2006.

Hence, the present appeal.

The submission of learned counsel for the appellants was that an application was filed by the appellants under Order 41 Rule 27 CPC but the said application was not decided by the learned Lower Appellate Court and,therefore, the matter deserves to be remanded back to the learned Lower Appellate Court. At the time of arguments, however, it was admitted by the learned counsel for the appellants that the additional evidence which was sought to be produced by filing an application under Order 41 Rule 27 CPC, did not correspond to the plea taken by the appellants in the written statement. Therefore, non decision of the application under Order 41 Rule 27 CPC had become immaterial because the evidence sought to be produced by way of application by the appellants was beyond the scope of pleadings

and,therefore, would not have affected the merits of the case.

The next submission of learned counsel for the appellants was that in fact the shop in dispute was constructed much earlier. The respondents neither proved the installation of electric connection nor examined any mason or labourer nor they have produced any bill to show if the building material was purchased by them in the year 1989-90 and,therefore, the completion of construction of the shop in dispute in the year 1990 has not been properly proved. Therefore, the shop was constructed much earlier.

This submission also falls to the ground. The oral evidence is there that the construction of the shop in dispute was completed in the year 1990. Besides that,documentary evidence has been produced and proved for the same purpose. It has come in the statement of Brash Bhan PW-5 that the site plan for the construction of the shop in dispute was sanctioned by the Municipal Committee on 23.10.1989 vide resolution No.313. This statement was corroborated by P.R.Gupta, Draftsman PW-4 who had prepared the proposed site plans Exhibits P-1 and P-2. Basti Ram, Junior Engineer of the Municipal Committee, Mahendergarh PW-6 also deposed that he inspected the site before the proposed site plan was sanctioned by the Municipal Committee. He proved his report Exhibit PW6/A. He also deposed that the site plan was sanctioned by Municipal Committee Mahendergarh vide resolution No.3123 dated 23.10.1989. This documentary evidence is sufficient to

prove that the site plan of the shop in dispute was approved by the Municipal Committee, Mahendergarh in October,1989 and,therefore, it is in tune with the case of the respondents that the construction of the shop in dispute was completed in the year 1990.

Dharam Pal, PW-8, an official of the Municipal Committee who also brought assessment register deposed that the house tax assessment of this shop for the first time was made in the year 1994-95 for the first time. This also,therefore, corroborates the version of the respondents that the shop in dispute was constructed after 1990. Even if any mason has not been examined or the bill has not been produced or electricity connection has not been proved, the case of the respondents is not falsified. These are only added circumstances which could prove the construction of the shop as pleaded by the respondents but the documentary evidence led by the respondents is more than sufficient to prove that the construction was raised not earlier than 1989-90. The civil suit for possession having been filed in the year 1997 was,therefore, within a period of 10 years from the date of construction.

For the reasons discussed above, no fault can be found with the concurrent findings of fact recorded by the Courts below.

Faced with this situation, the learned counsel for the appellants submitted that the appellants be given one year time to vacate the premises as they had to shift their business from the shop in

dispute. Considering the facts and circumstances of this case, if the appellants furnish an undertaking in writing and deposit the advance rent upto 31.5.2007 before the learned trial Court within a period of two weeks undertaking to vacate the premises on or before 31.5.2007 then the execution shall stand stayed till 31.5.2007. If the appellants fail to furnish the undertaking or deposit the advance rent upto 31.5.2007 before the learned trial Court within two weeks from today, then the appellants can be dispossessed by taking out execution of the judgment and decree under reference.

This appeal is disposed of in the above terms.

December 1,2006. (S. N. Aggarwal)
Jaggi Judge